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IN THE

Supreme Court of the United States

October Term, 1967
No. 1073

ELDON O. HALDANE,

Petitioner,

vs.

WILHELMINA HELEN KING CHAGNON; HORACE N. FREEDMAN; LEONARD S. SANDS; GORDON THOMPSON; WILFRED H. TOMLIN; ALBERT D. MATTHEWS,

Respondents.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENTS CHAGNON AND FREEDMAN IN OPPOSITION.

Opinions Below.

The *per curiam* opinion of the Court of Appeals for the Ninth Circuit, from which Petitioner is purporting to seek certiorari, is shown in the Petition as Appendix A. At this writing it has not yet been reported in the printed archives. The *actual* opinion of the Court of Appeals for the Ninth Circuit upon which Petitioner really is seeking certiorari (*Haldane v. Chagnon*) is reported at 345 F. 2d 601 (1965).

Jurisdiction.

The jurisdictional requisites are adequately set forth in the Petition.

Question Presented.

Whether when a complaint is filed in a district court against these respondents and others, and then dismissed, and the dismissal affirmed on appeal, the plaintiff may thereafter, two years later, file an almost identical complaint against these respondents (and others); yet now raise objection before this Honorable Court because the later complaint is again dismissed by the district court—on the grounds at bar by Statute of Limitations, *res judicata* and *stare decisis*—and the second dismissal is affirmed by the Ninth Circuit on the same grounds.

Statement.

On *March 5, 1964* Petitioner filed his original complaint, alleging therein that his civil rights had been violated when in 1961 a judge of the Los Angeles Superior Court had had him temporarily committed pending a psychiatric hearing; from which proceedings Petitioner was ultimately released, as not so mentally ill as to require confinement.

In his complaint Petitioner named as defendants: the committing judge; another judge who had referred the matter to the committing judge; the latter's clerk; and respondents Chagnon and Freedman.

As to respondents Chagnon and Freedman, Petitioner alleged (as is true) that they were attorneys at law, in private practice; and further alleged that they had "induced" the judges' actions, by suggesting the need for a psychiatric hearing.

The district court dismissed the complaint as to all the defendants; and on appeal the Ninth Circuit affirmed, in *Haldane v. Chagnon,* 345 F. 2d 601 (App C of Petition).

Thereafter, on *January 23, 1966*—Petitioner filed another complaint in the same district court; in which (although he omitted some defendants previously charged, and added others not previously named) he made virtually the same allegations against respondents Chagnon and Freedman.

Respondents Chagnon and Freedman moved to dismiss this complaint; one ground being bar by the applicable Statute of Limitations: the alleged "overt acts" of these respondents in "instigating" the judges' actions complained of were averred to have been committed on *March 8, 1961*—almost five years before the filing of the complaint—it being settled law that in respect to alleged civil rights violations instituted in the California Federal Courts the Statute of Limitations is *three years* (*Smith v. Cremins,* 308 F. 2d 187 (9 Cir. 1962); and *Lambert v. Conrad,* 308 F. 2d 571 (9 Cir. 1962).

These respondents also moved to dismiss the 1966 complaint on the grounds of *res judicata* and *stare decisis:* a final adjudication by an appellate court of the same facts involving these same parties, in *Haldane v. Chagnon,* 345 F. 2d 601.

The district court dismissed the *second* complaint in favor of these respondents (and the others) on the grounds urged; and the Ninth Circuit affirmed by a *per curiam* opinion (App. B of Petition); saying *only* the following:

> "The district court's order dismissing with prejudice appellant's complaint for damages under the Civil Rights Act 42 USC §1985(3) was required by this court's ruling in *Haldane v. Chagnon,* 345 F. 2d 601 (9th Cir. 1965). That decision binds this panel. The judgment is affirmed."

ARGUMENT.

I.

THE PETITION IS BARRED BY THE FAILURE TIMELY TO SEEK CERTIORARI.

Petitioner may superfically also purport to be seeking certiorari from said *per curiam* decision of the Ninth Circuit filed December 20, 1967; but *it is patently obvious from an examination of his Petition that he is really seeking certiorari from the earlier, 1965 decision, Haldane v. Chagnon,* 345 F. 2d 601.* *As Petitioner himself says* (emphases supplied):

> "The [current] memorandum opinion of the Circuit Court of Appeals is unreported . . . *that dismissal was based on Haldane v. Chagnon,** reported in 345 F. 2d 601. . . . (Pet. p. 2).
>
> * * *
>
> "*The decisions* of the court below *in the instant case and in Haldane v. Chagnon,* 345 F. 2d 601 . . . are directly and irreconcilably in conflict with (citations) (Pet. p. 5)."

It is therefore manifestly obvious that *Petitioner should have sought a writ of certiorari long ago;* within the requisite ninety days of the entry of judgment in *Haldane v. Chagnon,* 345 F. 2d 601, as is required by Rule 22 of this Honorable Court; *and* that *Petitioner's present application for a writ of certiorari is out of time, and should be denied.*

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*Logically, since the 1967 *per curiam* decision is entirely evolved from mere reliance on the findings in the 1965 decision, there cannot be, and there is not, any actual ruling *on the merits* in the *later* opinion; only the earlier decision concerned itself with the actual merits of the cause.

II.

THE PETITION IS LIKEWISE BARRED BY THE FAILURE TO COMPLY WITH RULE 23(e).

Rule 23(e) of this Honorable Court requires: "A concise statement of the case containing the facts material to the consideration of the questions presented."

Nevertheless, a careful reading of the Petition herein fails to disclose anything more than a few generalized emotional sentences of remonstration, couched in dramatic cliche—and *totally devoid of any facts.*

Indeed, although Petitioner has purported to seek the writ of certiorari against respondents Chagnon and Freedman (amongst others) he makes not one reference to these respondents by name in the body of his Petition; and relates not a single fact respecting *their* actions in relation to Petitioner or his civil rights.

Patently, therefore, the Petition should be denied, under Rule 23, subd 4, for "the failure . . . to present . . . whatever is essential to a ready and adequate understanding of the points requiring consideration."

III.

THE DECISION BELOW IS CLEARLY CORRECT. THERE IS NO CONFLICT OF DECISION. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW.

Yet even if the Petition be actually judged on its merits in relation to the 1967 *per curiam* decision (as this decision relies on the earlier opinion) it is still crystal clear that *no valid basis exists for the granting of a writ of certiorari; for all of the following reasons:*

1. No conflict of decision.

Contrary to what is stated in the Petition, page 5, neither of the two decisions, *Haldane v. Chagnon* actually *is* "directly and irreconcilably in conflict" with those cases cited in the Petition. *In truth, those cases (thus cited) are not even remotely in point, factually.*

Counsel for respondents Chagnon and Freedman have carefully examined every case cited in the Petition, and have observed that not a single one involves an action brought against an attorney in private practice for the alleged suggestion by the attorney to a judge that a psychiatric hearing, or even a psychiatric confinement, might be advisable.

Actually, it is settled law that no cause of action for an alleged deprivation of civil rights can lie against attorneys (like these respondents) in private practice; in no manner acting as state functionaries under color of law; for the mere suggestion to a judge that psychiatric court proceedings may appear practical—as the result of which actual psychiatric court proceedings are held under the exclusive control of a duly constituted judge and other public officials (see: *Byrne v. Kysar,* 347 F. 2d 734 (7 Cir. 1965) *cert. denied* in 383 U.S. 913; *Meier v. State Farm Mutual Auto Ins. Co.,* 356 F. 2d 504 (7 Cir. 1966) *cert. denied* in 385 U.S. 875; *Kenney v. Fox,* 232 F. 2d 288 (6 Cir. 1956); *Whittington v. Johnston,* 201 F. 2d 801 (5 Cir. 1953); *Cooper v. Wilson,* 309 F. 2d 153 (6 Cir. 1962); *Skolnick v. Martin* and *Skolnick v. Spolar,* 317 F. 2d 855, and 857, respectively. (7 Cir. 1963.)

2. The action relating to the current per curiam decision is barred by the applicable three-year Statute of Limitations:

Smith v. Cremins, 308 F. 2d 187, 98 A.L.R. 2d 1160 (9 Cir. 1962);

Lambert v. Conrad, 308 F. 2d 571 (9 Cir. 1962).

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3. The action relating to the current per curiam decision is barred against respondents Chagnon and Freedman by the doctrine of res judicata.

Having once pursued his earlier complaint against these respondents to final judgment, petitioner then filed a second complaint against these same respondents, alleging the same allegedly overt acts that were averred in the earlier complaint. The second action was thereupon barred.

Rhodes v. Meyer, 334 F. 2d 709 (8 Cir. 1964) *cert denied* in 379 U.S. 915 and 383 U.S. 939;

Crawford v. Zeitler; 326 F. 2d 119 (6 Cir. 1964).

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4. The action relating to the current per curiam opinion is barred by the doctrine of stare decisis.

Petitioner pursued his earlier action to final judgment by an ultimate decision on appeal. Then he started the same action all over again. The second action is barred under the rule of *stare decisis.*

Rhodes v. Meyer, 334 F. 2d 709.

Conclusion.

For the foregoing reasons it is respectfully submitted that the within Petition for a writ of certiorari should be denied.

Respectfully submitted,

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